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10/806,272	03/22/2004	Yasushi Ayaki	MTS-3514US	1942
23122	7590	10/09/2007	EXAMINER	
RATNERPRESTIA			GYORFI, THOMAS A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,272

Applicant(s)

AYAKI ET AL.

Examiner

Tom Gyorfi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 5 and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/24/04, 7/2/04, and 4/14/06</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1-23 are pending examination.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on 6/24/04, 7/2/04, and 4/14/06 have been considered by the examiner.

Claim Objections

3. Claim 22 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Each and every limitation explicitly recited in claim 22 appears verbatim in parent claim 3.
4. Claim 5 is objected to because of the following informalities: the claim contains what appears to be a typographic error in line 3: "apparatusaid". Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to software (descriptive

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material) *per se* which has been held to be an abstract idea not conforming to any of the statutory classes of invention: *In re Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759.

See MPEP 2106.01 for more information.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 8, 10, 11, 15, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "said classification"; however, there is insufficient antecedent basis for this limitation in the claims as no prior recitation of a classification exists in any of the rejected claims or in common parent claim 3.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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10. Claims 1 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Terranova et al. (U.S. Patent 6,868,434).

Regarding claims 1 and 21:

Terranova discloses a data use management system and method comprising at least one receiving apparatus connected to a network and capable of receiving and using predetermined data, and a transmitting apparatus which transmits the data to said receiving apparatus via said network (Figure 1), wherein the use of the data on said network is managed on the basis of the transmitting time required for transmission of predetermined information between said transmitting apparatus and said receiving apparatus (col. 3, line 52 – col. 4, line 13).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terranova, and further in view of Conte et al. (U.S. Patent 5,845,065)

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Regarding claims 2, 3, 22, and 23:

Per claim 2, Terranova discloses all the limitations of claim 1 above. Terranova further discloses an apparatus and program comprising: transmission time measuring means of measuring the transmission time required for transmission of predetermined information for measurement between said transmitting apparatus and said receiving apparatus (col. 3, lines 52-63); reference time storage means of storing at least one reference time (col. 4, lines 1-10); transmitting side authentication means of comparing the transmission time and the reference time classified on the basis of the reference time the transmission time belongs, determining, on the basis of the result of said determination, whether or not said receiving apparatus corresponding the transmission time can be permitted to use the predetermined data, and performing authentication if said receiving apparatus can be permitted to use the predetermined data (col. 3, line 64 – col. 4, line 13);

Terranova does not explicitly disclose authentication count means of incrementing the authentication count which is the number of instances performed by the transmitting-side authentication means; and the management function of comparing the authentication count with a maximum authentication count determined in advance with respect to each of the ranges of transmission time, and inhibiting further authentication if the authentication count is larger than the maximum authentication count. However, Conte discloses in an analogous system for accessing files and running network-aware applications (col. 3, lines 10-20; cf. Terranova, col. 1, lines 25-40) that an authentication count can be implemented, and can be used to inhibit further

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authentication if the authentication count is larger than the maximum authentication count (col. 20, lines 5-50; col. 11, lines 30-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a counter to keep track of a limited number of authentications in the system disclosed by Terranova. The motivation for doing so would be to increase the overall efficiency of the system and minimize delay (col. 3, lines 1-10).

Regarding claim 4:

Conte further discloses wherein said receiving apparatus has a unique identifier (col. 8, lines 30-65), and wherein, when said transmitting-side authentication means performs authentication with said receiving device, and the authentication on said receiving apparatus results in success, said transmitting-side authentication means identifies said receiving apparatus through said identifier (Ibid).

Regarding claim 5:

Conte further discloses wherein when an authentication request is sent from said receiving apparatusaid transmitting-side authentication means determines, through said identifier, whether or not from which the authentication request received from the receiving apparatus is the same as said receiving apparatus on which authentication has already been made successfully (Ibid; and col. 26, lines 30-40).

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Regarding claim 6:

Conte further discloses wherein if the authentication count is equal to or larger than the predetermined maximum authentication count, said transmitting-side authentication means performs such control that said transmitting-side authentication means does not accept the authentication request from said receiving apparatus. (col. 20, lines 25-50).

Regarding claim 7:

Terranova further discloses reference time setting means of setting the reference time on the basis of the result of measurement of the transmission time required for transmission of the information for measurement over a predetermined reference route. (col. 10, lines 30-40)

Regarding claim 8:

Conte further discloses wherein said transmitting-side authentication means sets the maximum authentication count to a smaller value on the basis of the result of said classification. (col. 16, lines 10-20)

Regarding claim 9:

Conte further discloses wherein said transmitting-side authentication means sets, with respect to each class in said classification, a count increment value by which said authentication count means increments the count. (col. 20, lines 25-50)

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Regarding claim 10:

Conte further discloses wherein the maximum authentication count is determined with respect to each class in said classification; said authentication count means increments the authentication count with respect to each class in said classification; and said transmitting-side authentication means limits the authentication count so that the authentication count with respect to each class in said classification does not exceed the maximum authentication count. (col. 20, lines 5-50)

Regarding claim 11:

Conte further discloses attribute information management means of managing attribute information about the predetermined data transmitted over said network, wherein said transmitting-side authentication means limits the authentication count on the basis of the result of said classification and the attribute information (col. 3, 10-30).

Regarding claim 12:

Conte further discloses wherein copy control information is used as the attribute information (col. 3, lines 20-30).

Regarding claim 13:

Terranova further discloses further comprising medium type determination means of determining a type of medium in transmission routes constituting said network, wherein said transmitting-side authentication means sets the reference time

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according to the type of medium, and limits the authentication count according to the result of classification made on the basis of the set reference time (col. 6, lines 30-55).

Regarding claim 14:

Terranova further discloses wherein when said medium type determination means detects the existence of a plurality of types of medium in the transmission routes, it selects the transmission medium type presumed to have the longest transmission time among the detected transmission media, and wherein said transmitting-side authentication means uses the selected type of medium for setting of the reference time. (col. 4, lines 1-30)

Regarding claim 15:

Terranova further discloses further comprising transmission mode determination means of determining a transmission mode in the transmission routes constituting said network, wherein said transmitting-side authentication means does not execute limitation of the authentication count on the basis of the result of said classification if the determined transmission mode is a predetermined transmission mode with no need for authentication count limitation with respect to the transmission time. (Ibid)

Regarding claim 16:

Conte further discloses further comprising billing information management means of managing billing information, wherein said transmitting-side authentication means

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limits the authentication count on the basis of the result of said classification and the billing information (col. 25, lines 5-15).

Regarding claim 17:

Terranova and Conte further disclose wherein said transmitting-side authentication means registers the transmission time together with said identifier and keeps the maximum value of the authentication count equal to or smaller than a predetermined number by canceling at least one of the authentications of a plurality of the registered receiving apparatus if the authentication count reaches the maximum value when authentication is newly performed. (Terranova: col. 10, lines 30-40; Conte: col. 20, lines 5-50)

Regarding claim 18:

Conte further discloses wherein if the registered receiving apparatus has a transmission time longer than the transmission time measured at the time of newly performing authentication when the authentication of any one of the registered receiving apparatus is cancelled, said transmitting-side authentication means cancels the authentication of the registered receiving apparatus having the longest transmission time. (col. 19, lines 10-30).

Regarding claim 19:

Terranova further discloses further comprising updating means of updating,

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according to input information externally supplied, at least one of the reference time and authentication count limitation conditions used by said transmitting-side authentication means. (col. 10, lines 30-40)

Regarding claim 20:

Conte further discloses wherein the data needs copy protection (col. 2, 45-65).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- U.S. Patent 6,560,648 to Dunn et al.
- U.S. Patent 7,028,073 to Bui et al.
- U.S. Patent Application Publication 2004/0030912 to Merkle et al.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Gyorfi whose telephone number is (571) 272-3849.

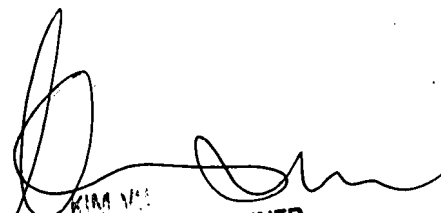
The examiner can normally be reached on 8:30am - 5:00pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TAG
9/27/07


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